

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**FREDERICK P. WINNER, LTD.,**  
**10000 Franklin Square Drive**  
**Nottingham, MD 21236,**

\*

\*

**Plaintiff,**

\*

**Case No.:** \_\_\_\_\_

**v.**

\*

**THE BOSTON BEER COMPANY, INC.** \*  
**One Design Center Place**  
**Suite 850** \*  
**Boston, MA 02210** \*

**Defendant.**

\*

\* \* \* \* \*

**COMPLAINT**

Plaintiff, Frederick P. Winner, Ltd. (“Plaintiff” or the “FPW”), by its counsel, Miles & Stockbridge P.C., and pursuant to 28 U.S.C. § 2201, hereby sues Defendant, The Boston Beer Company, Inc. (“Defendant” or BBC), and states as follows.

**NATURE OF ACTION**

1. This is an action brought to resolve a dispute over the proper construction and effect of the Maryland Beer Franchise Fair Dealing Act, MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §5-101, *et seq.* (the “Act”). On August 2, 2019 BBC advised FPW that BBC intends to terminate FPW’s rights to distribute Dogfish Head beer brands on September 3, 2019. There is no good cause for such termination and, therefore, it would violate the Act and FPW’s rights thereunder. Moreover, even if such good cause existed, FPW would be entitled under the Act to 180 days’ notice prior to the threatened termination, to receive payment of the fair market value of FPW’s distribution rights, and to retain its distribution rights until that fair market value has been determined.

2. FPW has advised BBC that its threatened termination of FPW's distribution rights violate the Act. BBC has responded by arguing that termination does not violate the Act, and thus an actual controversy exists with respect to the appropriate statutory construction of the Act and its application to FPW's distribution rights.

3. FPW seeks a declaration that BBC's threatened termination of FPW's rights violates the Act, and a preliminary and permanent injunction barring BBC from terminating FPW's distribution rights in the absence of good cause. Alternatively, if the Court determines that BBC is legally entitled to terminate FPW's distribution rights, FPW seeks a declaration that FPW is entitled to payment of the fair market value of those rights and that the termination cannot go into effect until the later of the determination of fair market value or January 30, 2020.

### **THE PARTIES**

4. Plaintiff FPW is a Delaware corporation with its principal place of business at 10000 Franklin Square Drive, Nottingham, Maryland 21236.

5. Defendant BBC is a Massachusetts Corporation with its principal place of business at One Design Center Place, Boston, Massachusetts 02210.

### **JURISDICTION AND VENUE**

6. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000.00 and is between citizens of different States.

7. This Court has personal jurisdiction over Defendant because it transacts business and contracts to supply goods and products in Maryland.

8. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events giving rise to the claim occurred in this district.

**FACTUAL BACKGROUND**

9. FPW is a “beer distributor” as defined in MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, § 5-101(b).

10. From at least June 30, 2014 through July 2, 2019, Dogfish Head Craft Brewery, Inc. (“Dogfish”) was both a “beer manufacturer” and a “franchisor” as defined in MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-101(d) and (f).

11. On or about June 30, 2014 FPW entered into a Distribution Agreement with, Dogfish through which FPW obtained the right to distribute Dogfish Head brand beer products in fourteen Maryland Counties and Baltimore City. Since June 30, 2014, with the consent of Dogfish, FPW has sold and transferred the distribution rights for those products in eight counties. FPW currently holds the rights to distribute Dogfish brands in Baltimore City, and in Anne Arundel, Baltimore, Carroll, Cecil, Harford and Howard Counties.

12. FPW achieved great success for itself and Dogfish in the distribution of Dogfish brands in FPW’s Central Maryland territories, and has grown sales of those brands in those territories by 12 % each year for the past three years. In recognition of FPW’s excellent performance as a Dogfish distributor, Dogfish named FPW Dogfish’s Distributor Spotlight at Dogfish’s 2017 and 2018 Annual Summits of its distributors.

13. BBC is both a “beer manufacturer” and a “franchisor” as defined in MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-101(d) and (f).

14. Upon information and belief, on July 3, 2019 Dogfish was merged into BBC, whereupon BBC replaced Dogfish as the beer manufacturer with the right to sell, distribute, or import Dogfish beer brands in Maryland.

15. On August 2, 2019, BBC notified FPW that FPW's rights to distribute Dogfish brands in Maryland would be terminated effective September 3, 2019. The letter, which gave FPW only 32 days' notice prior to the threatened termination, did not assert that there was any good cause for the threatened termination. The letter further stated that FPW would be paid "Reasonable Compensation," rather than fair market value, for its Dogfish distribution rights.

16. There is no good cause to terminate FPW's Dogfish distribution rights.

17. The termination of FPW's Dogfish distribution rights would result in damage to FPW's business and business goodwill that would be difficult, if not impossible, to accurately measure in terms of money damages.

18. On August 7, 2019, FPW, through counsel, advised BBC that the threatened termination of FPW's rights to distribute Dogfish brands in Maryland would violate MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-108(b) and 5-201(b) and demanded that the notice be rescinded. On August 8, 2019, BBC, through counsel, responded that the threatened termination would not violate the Act, and that BBC would not rescind the notice that FPW's distribution rights would be terminated September 3, 2019.

### **COUNT I – DECLARATORY JUDGMENT**

19. FPW incorporates the allegations above as if fully set forth herein.

20. An actual controversy exists within the jurisdiction of this Court between the FPW and BBC as to the proper construction of MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-108(b) and 5-201(b) and whether they prohibit BBC's threatened termination of FPW's distribution rights without good cause.

21. If BBC's threatened termination violates MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-108(b) and 5-201(b), FPW would have a right of action under MD.

CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-109 that would entitle FPW to injunctive relief and/or damages, as well as costs of such action.

22. A declaration from the Court as to the proper construction of MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-108(b) and 5-201(b) and their application to the facts of BBC's threatened termination of FPW's distribution rights will terminate the controversy and uncertainty giving rise to this action.

WHEREFORE, Plaintiff, Frederick P. Winner, Ltd., respectfully requests that:

A. This Court determine and adjudicate the rights and liabilities of the parties with respect to MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-108(b) and 5-201(b) and their application to the facts of BBC's threatened termination of FPW's distribution rights;

B. This Court find and declare that BBC's threatened termination of FPW's distribution rights would violate MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-108(b) and 5-201(b) and, therefore give rise to an action in favor of FPW and against BBC under MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-109 that would entitle FPW to injunctive relief and/or damages, as well as costs of such action;

C. This Court preliminarily and permanently enjoin BBC from terminating FPW's distribution rights; and

D. This Court award to Frederick P. Winner the cost of these proceedings, and such other and further relief as this Court deems just and appropriate under the circumstances.

### **COUNT II – DECLARATORY JUDGMENT**

23. FPW incorporates the allegations above as if fully set forth herein.

24. An actual controversy exists within the jurisdiction of this Court between the FPW and BBC as to whether, if BBC is entitled to terminate FPW's distribution rights without

good cause, such termination can be occur earlier than the 180 notice period set forth in MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, § 5-107(b) or a determination of the fair market value of FPW's distribution rights under MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-201(d). FPW maintains that, if BBC is entitled to terminate FPW's distribution rights without good cause, such termination may not occur until after the fair market value of those rights have been determined through negotiation, mediation or litigation per MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-201(d) and (e) and that in no event can such termination occur prior to January 30, 2020 per MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, § 5-107(b). BBC maintains that it can terminate FPW's distribution rights as of September 3, 2019.

25. If BBC's threatened termination violates MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, § 5-107(b) and §§ 5-201(d) and (e), FPW would have a right of action under MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-109 that would entitle FPW to injunctive relief and/or damages, as well as costs of such action.

26. A declaration from the Court as to the proper construction of MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, § 5-107(b) and §§ 5-201(d) and (e) and their application to the facts of BBC's threatened termination of FPW's distribution rights will terminate the controversy and uncertainty giving rise to this action.

WHEREFORE, Plaintiff, Frederick P. Winner, Ltd., respectfully requests that, if the Court determines that BBC may legally terminate FPW's distribution rights without good cause:

A. This Court determine and adjudicate the rights and liabilities of the parties with respect to MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, § 5-107(b) and §§ 5-201(d) and (e) and their application to the facts of BBC's threatened termination of FPW's distribution rights;

B. This Court find and declare that BBC's threatened termination of FPW's distribution rights would violate MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, § 5-107(b) and §§ 5-201(d) and (e) and, therefore give rise to an action in favor of FPW and against BBC under MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-109 that would entitle FPW to injunctive relief and/or damages, as well as costs of such action;

C. This Court preliminarily and permanently enjoin BBC from terminating FPW's distribution rights prior the later of (i) the determination and payment of the fair market value of those rights per MD. CODE ANN., ALCOHOLIC BEVERAGES ARTICLE, §§ 5-201(d) and (e); or (ii) January 30, 2020.; and

D. This Court award to Frederick P. Winner the cost of these proceedings, and such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: August 9, 2019

Respectfully submitted,

/s/

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